



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

The Honorable Ron Wilson
Chair
House Committee on Licensing
and Administrative Procedures
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-059

Re: Whether the offense of criminal trespass, Penal Code section 30.05, may be committed on a bus (ID# 37779)

Dear Representative Wilson:

You have requested our opinion as to whether the offense of criminal trespass, as set forth in section 30.05, Penal Code, may be committed on a bus. That statute provides, in relevant part:

(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "Entry" means the intrusion of the entire body.
- (2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden; or

(D) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

The question you pose arises as a result of newly enacted V.T.C.S. article 4423(29ee), which provides for the licensing of individuals to carry handguns. Some

public transportation authorities have indicated their desire to prohibit the carrying of handguns on their vehicles, to post signs to that effect, and to prosecute for criminal trespass any handgun-carrying individual who attempts to board such a vehicle after being given "notice to depart" by the driver.

The courts of most other jurisdictions have held that a criminal trespass statute is not applicable to an offense committed aboard a vehicle. *See, e.g., New York v. Pratt*, 625 N.Y.S.2d 869 (N.Y. Crim. Ct. 1995); *Nebraska v. W.D.*, 441 N.W.2d 608 (Neb. 1989); *R.C.W. v. Florida*, 507 So.2d 700 (Fla. Dist. Ct. App. 1987); *Ohio v. Finnegan*, 457 N.E.2d 900 (Ohio Ct. App. 1983). The statutes of these jurisdictions, however, prohibit entry upon "premises," "land," "a building," "real property," or an "occupied structure." The Texas statute, on the other hand, applies, expansively, to "property" or "a building." Since a bus is indisputably "property," the seeds of confusion have been sown.

The Texas Court of Criminal Appeals has settled the issue, however. In *Williams v. State*, 605 S.W.2d 596, 600 (Tex. Crim. App. 1980), *overruled on other grounds*, *Woodfox v. State*, 742 S.W.2d 408 (Tex. Crim. App. 1987), the court held that "criminal trespass" under section 30.05 is not a "lesser included offense" of the crime of "unauthorized use of a motor vehicle," as proscribed in section 31.07, Penal Code. The court declared:

Criminal trespass, as denounced in Sec. 30.05 of the Penal Code, relates to "property" or "a building" and is quite foreign to the offense charged against appellant, the unauthorized use of a vehicle as denounced in Sec. 31.07(a) of the Code. One statute relates to real property, land and buildings, while the other relates to chattels—boats, airplanes, or motor-propelled vehicles.

Id. at 600; *see also Langston v. State*, 855 S.W.2d 718, 722 (Tex. Crim. App. 1993) (Clinton, J., concurring) (prohibition of criminal trespass refers only to "real property of another"); *Day v. State*, 532 S.W.2d 302, 306 (Tex. Crim. App. 1975) (element of criminal trespass requiring that person "enter or remain on property" is "virtually identical" to that element of burglary requiring that person "enter a habitation or dwelling" or "remain concealed in a habitation or building").

The Texas Court of Criminal Appeals is the highest authority on the criminal law of Texas, and it has made clear that criminal trespass may not be committed on a motor vehicle. We conclude therefore that the offense of criminal trespass, as described in section 30.05, Penal Code, may not be committed on a bus.

S U M M A R Y

The offense of criminal trespass, as described in section 30.05, Penal Code, may not be committed on a bus.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Rick Gilpin".

Rick Gilpin
Deputy Chief
Opinion Committee